

To: Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice  
601 D Street NW  
Suite 1200  
Washington, DC 20530-0001  
Fax: 202-307-1545

From: Charles Jenkins  
112 Nasson LN  
Oak Ridge, TN 37830  
Fax: 865-675-1241

**Subject: Comments on the Remedy Phase of the Microsoft Antitrust Trial**

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I'm submitting this letter to you for inclusion in the public comments, as provided for by the Tunney Act, on the proposed settlement of the United States of America vs. Microsoft. I sent a copy of these comments via postal mail before I learned that fax or email comments are preferred; I'm now sending this copy via fax in order to comply with the request that appeared in the *Federal Register*. I have also corrected some omissions, so if you would, please accept this version of my letter instead of the one sent through the Postal Service.

The point of illegal, monopolistic behavior is to frustrate consumer choice. Competitors suffer as a side-effect. I believe that the goal of an antitrust remedy should be to restore consumer choice. If the settlement focuses on punishing Microsoft or giving some kind of boost to its competitors, the long-term effect will be negligible and the anti-competitive situation will remain.

The fundamental flaw in the remedy proposed by the Department of Justice is that it puts mild restrictions on Microsoft's behavior, with plenty of loopholes to allow Microsoft to escape the few provisions—like revealing Windows Application Program Interfaces (API's) to competitors—that could make some difference. This is especially egregious because the biggest threat facing Microsoft comes from open-source and free software, and Microsoft has been allowed to negotiate a remedy that defines its competitors in terms of sales revenue—thus allowing it to escape disclosing Windows API's to the real competitors who have the best chance of providing alternatives to Microsoft's monopoly. Basically, it seems to me that the overwhelming majority of companies that could meet this remedy's definition of a competitor are Microsoft's corporate partners!

Since Microsoft has been found guilty of illegally maintaining its monopoly in the market for computer operating systems, a verdict reaffirmed on appeal, I believe that now is the time to go forth cautiously, carefully crafting a remedy with the overt goal of restoring consumer choice.

### ***The Consumer's Trap***

The lynchpin of Microsoft's operating system dominance is the link between Microsoft Office and Windows. New personal computers come preloaded with Windows, and Office is usually included "free" or for a small fee.

I was formerly the network administrator at my company, and I have seen first-hand the deleterious effect of this situation.

Microsoft Office programs use proprietary file formats that change with each new version of Office. I believe Microsoft makes changes to these formats for three reasons: To add new features; to frustrate competition by preventing competitors' efforts to develop up-to-date "import filters" that will allow their software interpret Office files and thus exchange data gracefully with users of Microsoft Office; and to make it difficult for an individual company to standardize on an older version of Office which cannot read new versions of the files. This wouldn't be such a problem, except that businesses automatically become "infected" with new versions of Office as computers are upgraded. A Corporate Information Systems (IS) department simply *must* to learn to support new versions of Office, because there is no way to keep them out.

Microsoft Office takes over, because companies are faced with the choice of getting Office "free" or paying for competing products. Even if competing products are extremely low-cost or free themselves, IS has to support Office because they can't keep it out of the door. In this environment, how can a company justify spending money supporting and retraining for a second office suite to be used in parallel?

In the end, only companies with anti-Microsoft zealots in powerful positions can avoid becoming dependent upon Office, and therefore upon Windows.

### ***Restoring Choice***

Microsoft Office and Windows are linked in two ways: By technical links and by artificial links.

The technical links exist because Office is written to run on Windows. This is reasonable and appropriate.

The artificial links traditionally have included discounts, benefits, and even punishments offered to personal computer manufacturers to encourage them to bundle Office on new computers. They also include things like Microsoft licensing and support agreements that lump operating system software and business software together for the companies who purchase those agreements.

It is these artificial links that stifle consumer choice and software competition, and therefore, the remedy for Microsoft's illegal behavior should be to sever these artificial links as thoroughly and permanently as possible.

**In a nutshell, whether sold separately or together as Microsoft Office (or by any other name), Microsoft's business software should be sold to every end user for the same price, whether purchased in conjunction with a computer or not. (And any "home" or "personal" version of business software should be treated the same way.)** CompUSA should pay the same per-copy price for the Microsoft business software that they stock on their shelves as Dell pays to pre-load it on new PC's. Also, Microsoft should not be able to offer/threaten any discount, benefit, or punishment to computer sellers in order to encourage them to purchase or pre-load Microsoft business software.

Microsoft should not be allowed to "integrate" business software into the operating system and sell it as one product.

Support and upgrade/licensing agreements for the Microsoft operating system and business software product lines should be kept entirely separate, with no discounts or incentives for customers who purchase agreements for multiple product lines.

These restrictions should either be in effect permanently, or until a healthy level of competition is achieved in both the business and operating systems software markets. Consumers should not become dependent upon Microsoft Office because it comes with the monopoly operating system, and they should not be forced to use Microsoft Windows because they need it to run the monopoly office suite.

This will force the Microsoft business software applications, whether sold together or separately, to compete based on price and performance.

How will this restore choice? On the face of it, these restrictions appear to do no more than add to the end user's cost, but the fact is, if everyone has to pay the same price for Office, we are likely to see that price drop dramatically, as Microsoft will suddenly have to face real competition. The corporate Chief Information Officer will have to justify expenditures on Microsoft Office, weighing real costs and benefits against competing software, instead of simply facing the inevitability of supporting Office.

Companies and individuals who purchase computers will no longer receive Office by default; if they want it preloaded on a new PC, it will be an add-on option that costs the same as going down to Wal-Mart and buying Office separately. This gives the consumer the option to perform a cost-benefit analysis. *If Office is no longer "free," is it worth what we pay? Are there other products that might serve us better?*

This will restore competition for business software, and also restore competition to the operating system market as well: Companies and individuals who choose *not* to use Office are likely to find that they are no longer locked in to Windows, either.

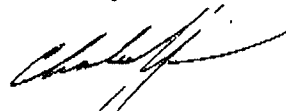
At the same time, this solution would not put an undue burden on Microsoft. There are indeed many customers who are happy with things pretty much the way they are now, and who don't realize how the ordinary consumer is injured by Microsoft's monopoly. If they had to pay a retail price for Office instead of receiving it "free" on new computers, they would choose to do just that in order to continue using a familiar product whose shortcomings they've learned to accept. This situation is fine; in fact, it is desirable. If it turns out that Windows and Office can compete well against other platforms in an environment of *real* consumer choice, then they deserve all the market share they can get. I and a great many others would like to see the result of that experiment: We would like to exist in an environment with real consumer choice.

### ***In Conclusion***

On December 12, forgetting that Brer Rabbit is supposed to say "please *don't* throw me into that briar patch," Microsoft filed a motion vigorously supporting the remedy being considered by the court. I know that the law is a complex matter, and that this case is especially difficult, but I think it is a telling point that the defendant company, having been found guilty of illegal acts, now loudly and enthusiastically supports a remedy that they (Microsoft) are happy with, a remedy that they helped to create.

I respectfully ask the court to implement a remedy that will go much farther toward restoring consumer choice than does the one currently under consideration, and I ask that the final remedy be written *without* loopholes that would allow Microsoft to escape its provisions—especially in regard to open-source software systems that need to interoperate gracefully with Microsoft operating systems and business software in order to become viable alternatives.

Sincerely



Charles Jenkins